

**IN THE IOWA DISTRICT COURT FOR POLK COUNTY**

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**STEPHEN R. WIARDA,**

**Petitioner,**

**vs.**

**IOWA PUBLIC EMPLOYMENT  
RELATIONS BOARD,**

**Respondent.**

**Case No. AA 3752**

**RULING ON  
PETITION FOR JUDICIAL REVIEW**

*01-MA-03*

**(Contested Hearing)**

Hearing was held on April 3, 2002 on Petitioner's Petition for Judicial Review filed on October 9, 2001. Attorney Ryan A. Genest appeared for Petitioner. Attorney Jan V. Berry appeared for the Respondent. Both parties timely filed their respective briefs. The Court, having reviewed the court file, the parties' briefs and hearing the arguments of counsel, now enters its Ruling.

**RULING**

**I. ISSUE**

Whether Petitioner's claim of a violation of due process by the Iowa State Training School not providing him with a pre-termination notice and hearing before his termination from employment was a proper issue which the PERB was statutorily required to address?

**II. STATEMENT OF THE CASE**

On April 25, 2000, Petitioner Wiarda (Wiarda) was terminated from his employment at the Iowa State Training School (ISTS) in Eldora, Iowa. Thereafter, Wiarda timely followed the appropriate grievance procedures. Wiarda filed his initial grievance, called a Third-Step Grievance, with the state's Iowa Department of Personnel (IDOP). On June 19, 2000, a Third-Step Meeting was held, although Wiarda is noted as not attending in person, but having submitted "numerous

documents.” (Ex. 5 & 15).<sup>1</sup> On July 10, 2000, the IDOP, by attorney Jayme R. Richards, filed the Third-Step Answer denying Wiarda’s grievance. (Id.) Following this denial, on August 1, 2000, Wiarda filed an Appeal with the Iowa Public Employment Relations Board (PERB), pursuant to Iowa Code § 19.14(2). (Ex. 3). On March 9, 2001, a hearing was held before Administrative Law Judge (ALJ) Charles E. Boldt, who filed his Proposed Decision and Order on April 11, 2001, which dismissed Wiarda’s appeal, finding “just cause” existed to support Wiarda’s termination. (Ex. 19).

On April 16, 2001, pursuant to Iowa Administrative Rule 621-11.7 and 11.8, Wiarda timely filed his appeal from the ALJ’s Proposed Decision and Order to the PERB. (Ex. 20). The PERB heard oral arguments on August 21, 2001, and issued its Decision on September 10, 2001, affirming the ALJ’s Proposed Decision and Order that Wiarda’s termination was for “just cause.” (Ex.25). It is from the PERB’s final agency decision that Wiarda filed this Petition for Judicial Review with this Court pursuant to Iowa Code § 17A.19, on October 9, 2001. The PERB filed its Answer on October 26, 2001.

As to Petitioner Wiarda’s specific claim of a due process violation for want of a pre-termination notice and hearing, he first raised this in his letter dated June 9, 2000 to the IDOP. At the bottom of the first page, Wiarda states: “I was not even offered a chance to defend myself. I was not allowed due process.” Later, at the bottom of page 8, Wiarda wrote: “I have been denied due process because I was even denied my right to self-defense during the day of firing. The letter of termination was merely turned over in front of me with no word of self defense even allowed.” (Ex. 3). The issue was not addressed in IDOP’s Third Step Answer. (Ex. 5 & 15).

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<sup>1</sup> All references are to the tabbed exhibits in the Certified Record.

Wiarda's attorney<sup>2</sup> again raised the due process issue in his Closing Brief and Argument filed with the ALJ on March 22, 2001. (Ex. 17, pp. 1, 3 & 5). This time, the due process claim was addressed by ALJ Boldt in his Proposed Decision and Order of April 11, 2001. (Ex. 19, pp. 6, 7, 10, 12, 13 & 16). In Wiarda's appeal to the PERB, the due process claim was the only issue argued. In the PERB's Decision on Review filed September 10, 2001, at page 2, the PERB states: "Wiarda's sole argument on appeal is that the ALJ failed to consider his argument that the State did not afford him a face-to-face 'hearing' prior to his termination in violation of his constitutional right to due process, as recognized in *Cleveland Board of Education v. Loudermill*, 470 U.S. 532, 105 S.Ct. 1487, 84 L.Ed. 2d 494 (1985)." (Ex. 21, p. 2).

This due process issue remains the sole issue Wiarda raises in this administrative appeal filed pursuant to Iowa Code § 17A.19.

### **III. STATEMENT OF FACTS**

Wiarda does not challenge the factual findings as set forth in the ALJ's Proposed Decision and Order filed April 11, 2001. (Ex. 19). To this extent, the Court, for purposes of this administrative appeal, adopts those findings of facts, pages 2 – 7, as if set forth here. In addition, the Court adopts the PERB's statement of facts it sets forth in its Brief at page 4: "The only fact truly relevant to the issue before the Court is that PERB refused to adjudicate Wiarda's claim that he had been unconstitutionally deprived of property without due process of law, due to the Board's lack of jurisdiction over such claims (certified record tab 25 at pp. 2-3)."

### **IV. STANDARD OF REVIEW**

Judicial review of a final agency action is governed by application of standards set out in

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<sup>2</sup> Attorney James D. Robinson appeared for Wiarda before the ALJ.

Iowa Code § 17A.19 (2001)<sup>3</sup>. The court shall reverse, modify, or grant other appropriate relief from agency action if the agency action was based upon a determination of fact clearly vested by a provision of law in the discretion of the agency that is not supported by substantial evidence in the record before the court when that record is viewed as a whole. Iowa Code § 17A.19(10)(f) (2001). See also Sylvara v. Hancock/Winnebago Counties Home Care Aid & Nursing Services, No. 1-467/00-1620, 2002 Iowa App. Lexis 67, at \*5 (Iowa Ct. App., 2002). “Substantial evidence” means the quantity and quality of evidence that would be deemed sufficient by a neutral, detached, and reasonable person, to establish the fact at issue when the consequences resulting from the establishment of that fact are understood to be serious and of great importance. Iowa Code § 17A.19(10)(f)(1) (2001). The adequacy of the evidence in the record to support a particular finding of fact must be judged in light of all the relevant evidence in the record including any determinations of veracity by the presiding officer who personally observed the demeanor of the witnesses and the agency’s explanation of why the relevant evidence in the record supports its material findings of fact. Iowa Code § 17A.19(10)(f)(3) (2001).

The court shall also reverse, modify, or grant other appropriate relief from agency action if the agency action was based upon an erroneous interpretation of a provision of law whose interpretation has not clearly been vested by a provision of law in the discretion of the agency. Iowa Code § 17A.19(10)(c) (2001). See also Iowa Code § 17A.19(10)(a)-(n) (describing other grounds which mandate reversal, modification, or other appropriate relief from agency action). In making the determinations required by subsection 10, paragraphs “a” through “n,” the court shall not give deference to the view of the agency with respect to particular matters that have not been vested by a

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<sup>3</sup> The 1998 amendments to subsections 1, 5, and 8 of Iowa Code § 17A.19 apply to agency proceedings “commenced, or

provision of law in the discretion of the agency. Iowa Code § 17A.19(11)(b) (2001). However, appropriate deference is given when the contrary is true. Iowa Code § 17A.19(11)(c) (2001).

The burden of demonstrating the required prejudice and the invalidity of agency action is on the party asserting invalidity. Iowa Code § 17A.19(8)(a) (2001). The Court shall make a separate and distinct ruling on each material issue on which the court's decision is based. Iowa Code § 17A.19(9) (2001).

## V. CONCLUSIONS OF LAW

An employee with a property interest in continued employment is entitled to due process by a pre-termination notice and hearing. Cleveland Bd. of Educ. v. Loudermill, 470 U.S. 532, 105 S.Ct. 1487, 84 L.Ed.2d 494 (1985).

A state employee in Iowa has a property interest in continued employment absent termination for "just cause." Board of Regents v. Roth, 408 U.S. 564, 570-71, 33 L. Ed. 2d 548, 92 S. Ct. 2701 (1972); Winegar v. Des Moines Independent Community School District, 20 F.3d 895, 899 (8<sup>th</sup> Cir. 1994).

## VI. DISCUSSION

The PERB, in its final agency decision, stated:

Wiarda's sole argument on appeal is that the ALJ failed to consider his argument that the State did not afford him a face-to face "hearing" prior to his termination in violation of his constitutional right to due process, as recognized in *Cleveland Board of Education*, 470 U.S. 532, 105 S.Ct. 1487, 84 L.Ed.2d 494 (1985). Wiarda cites *Winegar v. Des Moines Independent School District*, 20 F.3d 895 (8<sup>th</sup> Cir. 1994) for the proposition that an investigation is not an adequate substitute for this pre-termination requirement.

As provided in Iowa Code section 19A.14(2), PERB's jurisdiction in this type of appeal is limited to determining whether the disciplinary action taken meets a "just

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conducted on remand from a court or other agency, on or after July 1, 1999." (emphasis added).

cause” standard. PERB thus focuses on the legitimacy of the State’s reason for taking the action that it did, rather than the procedure it followed in communicating its decision to the affected employee. After reviewing and discussing the types of factors to be considered in making a determination, the administrative law judge concluded, and we concur, that Wiarda’s employment was terminated for just cause. The board is without jurisdiction to adjudicate the constitutional claim Wiarda has raised. As the *Loudermill* and *Winegar* cases cited by Wiarda illustrate, claims that an employee has been deprived of constitutional rights may be properly raised in the courts. Accordingly, we have not considered and have made no determination regarding the validity of Wiarda’s constitutional claim.

Wiarda’s sole claim here is the same as he raised before the PERB: whether he was provided his pre-termination due process. Respondent PERB agrees in its brief and argument to the Court that supervisory personnel at ISTS did not give Wiarda a pre-termination notice and hearing.<sup>4</sup> PERB contends that under the statutory scheme of Iowa Code chapter 19A, its sole obligation was to determine whether Wiarda was terminated for “just cause,” which it claims it properly did, and that it properly did not confront Wiarda’s constitutional claim. If Wiarda’s pre-termination due process was violated, the PERB argues here, such violation was done by the ISTS, a division of the Department of Human Services (DHS), and Wiarda’s basis for reversal is not properly lodged against PERB in this administrative appeal; rather, the PERB held then and asserts now that regardless of its decision, Wiarda has a legal remedy in the courts by filing a civil suit<sup>5</sup> against the ISTS and DHS. In other words, once Wiarda’s termination has taken place, the PERB determined as a matter of law and now argues it was not within its statutorily prescribed review under Iowa Code § 19A.14(2) to address Wiarda’s due process issue and fashion a remedy. The PERB concludes that it should be affirmed in this administrative appeal because it properly discharged its statutory duty in determining

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4 Based on PERB’s concession that Wiarda was deprived of his pre-termination hearing, this Court will not undertake an analysis of whether Wiarda was entitled to such a hearing, as suggested in Moore v. Warwick Public School District No. 29, 794 F.2d 322 (8<sup>th</sup> Cir. 1986).

5 PERB suggests the action should be brought as a 42 U.S.C. § 1983 claim.

the “just cause” issue as to Wiarda’s termination from employment.

In addition, PERB notes that Wiarda’s claim of constitutional deprivation is *not* pointed at the PERB’s procedural handling of his appeal, but rather points at ISTS and DHS. In other words, the PERB wants this Court to view it as its own, separate administrative body, which pursuant to statutory directive, as a quasi-judicial, post-termination appeal process independently reviews state employee terminations conducted by other state agencies and, for administrative appeal purposes, that the district court should review the employer-agency’s procedural conduct and due process violation (here, ISTS and DHS) separately from the PERB’s procedural handling of the termination appeal process. Wiarda argues that Iowa Code chapter 19A is one over-all statutory scheme that provides for the termination process of state employees, which must include pre-termination due process, and that it does not matter whether the PERB is viewed as a separate administrative review agency within that process.

The key then is how one frames the issue because that will dictate a party’s desired result. According to PERB, the issue for this Court is whether PERB correctly applied Iowa Code chapter 19A in determining that it had no authority to address Wiarda’s constitutional due process claim.<sup>6</sup> According to Wiarda, the issue is: “Did the termination process used by the Iowa State Training School, later approved by the Administrative Law Judge and the Iowa Public Employment Relations Board, violate Petitioner’s right of due process guaranteed by the United States and Iowa Constitution?”<sup>7</sup> The parties have not cited to this Court any cases directly on point and the Court has

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<sup>6</sup> PERB describes the issue at page 6 of its Brief: “Consequently, the real issue before the Court is not the substantive one of whether DHS’s termination procedure deprived Wiarda of property without due process, but rather is whether PERB was correct in determining that it had no jurisdiction to adjudicate his constitution-based claim.

<sup>7</sup> Wiarda’s Brief, page 7.

found none.

The parties agree that Wiarda's proceeding before the PERB was based on Iowa Code §19A.14(2). It provides in pertinent part:

2. *Discipline resolution.*

...  
If not satisfied, the employee may, within thirty calendar days following the director's response, file an appeal with the public employment relations board. The employee has the right to a hearing closed to the public, unless a public hearing is requested by the employee. The hearing shall otherwise be conducted in accordance with the rules of the public employment relations board and the Iowa administrative procedure Act. If the public employment relations board finds that the action taken by the appointing authority was for political, religious, racial, national origin, sex, age, or other reasons not constituting just cause, the employee may be reinstated without loss of pay or benefits for the elapsed period, or the public employment relations board may provide other appropriate remedies. Decisions by the public employment relations board constitute final agency action.(Emphasis added.)

The PERB claims it is limited by this statutory directive regarding its jurisdiction to determine "just cause." However, as held in Loudermill, the agency's review must include the constitutional claim even when the statutory language limits the review to specific statutory criteria.

In Vitek v. Jones, 445 U.S. 480, 491 (1980), we pointed out that "minimum [procedural] requirements [are] a matter of federal law, they are not diminished by the fact that the State may have specified its own procedures that it may deem adequate for determining the preconditions to adverse official action." This conclusion was reiterated in Logan v. Zimmerman Brush Co., 455 U.S. 422, 432 (1982), where we reversed the lower court's holding that because the entitlement arose from a state statute, the legislature had the prerogative to define the procedures to be followed to protect that entitlement.

...  
The right to due process "is conferred, not by legislative grace, but by constitutional guarantee. While the legislature may elect not to confer a property interest in [public] employment, it may not constitutionally authorize the deprivation of such an interest, once conferred, without appropriate procedural safeguards." Arnett v. Kennedy, *supra*, at 167 (POWELL, J., concurring in part and concurring in result in part); see *id.*, at 185 (WHITE, J., concurring in part and dissenting in part).

Cleveland Bd. of Educ. v. Loudermill, 470 U.S. 532, 105 S.Ct. 1487, 84 L.Ed.2d 494 (1985). Thus,



the PERB is in no position to claim that its limitation under Iowa Code § 19A.14(2) prohibits it from scrutinizing whether ISTS provided the pre-termination due process requirements under either the state or federal constitution. Thus, the PERB failed to perform its review obligation under Loudermill when it refused to directly address Wiarda's due process claim.

It is also not lost on this Court that in Loudermill the United States Supreme Court addressed Loudermill's second constitutional claim that the state's administrative appeal process regarding his termination was so delayed as to also deny him due process. Although decided adversely to Loudermill on the merits, this indicates that he not only had the right to pursue his action through the federal court system, but that he properly raised, preserved and pursued his challenge within the Ohio state post-termination framework for public employees, as Wiarda is doing here. Nothing in the Loudermill decision indicates that he was limited in his election of remedies to only pursue his claim administratively, as the PERB suggests here. The PERB cites no authority for its position that Wiarda is so limited in this case. Wiarda's claim is properly before the Court in this administrative appeal.

Finally, as highlighted in Iowa Code § 19A.14(2), the PERB is not limited in its statutory remedies, but "*may provide other appropriate remedies.*" Even if the PERB does not find it incumbent on itself to address Wiarda's constitutional claims, it is so mandated on this Court under Iowa Code § 17A.19(10)(a) ("unconstitutional on its face or as applied or is based upon a provision of law that is unconstitutional on its face or as applied"); or (d) ("Based upon a procedure or decision-making process prohibited by law or was taken without following the prescribed procedure or decision-making process"). This Court is mandated by Loudermill and Iowa Code chapter 17A to review Wiarda's due process claim and fashion a remedy. Upon remand to the PERB, it likewise has

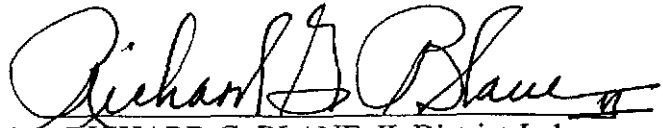
the statutory power to fashion a remedy.

This Court finds that the proper phrasing of the issue in this appeal is as put forth by Wiarda. The issue commands, based upon Loudermill and its progeny of cases, that Wiarda did not receive his constitutional rights to pre-termination due process notice and hearing. In this administrative appeal, where he has fully preserved this issue, he is entitled to relief, whether it is directed to the PERB or the underlying, constitutionally deficient termination proceedings. The Court finds that the decision of the PERB in affirming the procedurally defective termination process must be reversed. Further, the action must be remanded to the PERB, with directions to forward the case to the Iowa Department of Human Services, Iowa State Training School, to provide Wiarda with a pre-termination hearing consistent with Loudermill. Nothing in this ruling is meant to indicate whether the ISTS/DHS has "just cause" or not for terminating Wiarda.

### ORDER

**IT IS ORDERED** that the decision of the PERB in affirming the termination of Steven R. Wiarda is hereby **REVERSED**. Further, the action is **REMANDED** to the PERB, with directions to forward the case to the Iowa Department of Human Services, Iowa State Training School, to provide Wiarda with a pre-termination hearing consistent with Loudermill.

**SO ORDERED** this 4<sup>th</sup> day of June, 2002.

  
RICHARD G. BLANE, II, District Judge  
Fifth Judicial District of Iowa

Jan V. Berry ✓  
514 E. Forest Street Ste 202  
DM In 50309

Ryan Genst ✓  
111 Second Street SE  
At home In 50009

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POLK COUNTY, IA.  
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CLERK DISTRICT COURT

Copies to:

Ryan A. Genest  
111 - 2<sup>nd</sup> Street S.E.  
Altoona, Iowa 50009  
ATTORNEY FOR PETITIONER

Jan V. Berry  
514 East Locust Street, Suite 202  
Des Moines, Iowa 50309  
ATTORNEY FOR RESPONDENT

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